IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.449 OF 2004.

Krishna Laxman Pujare
since deceased, through
Smt. Radhabai Krishna Pujare
& Others ..Appellants

versus

Narayan Laxman Ghadigaonkar ..Respondent.

Mr.Rajesh Datar for the Appellants.
Mr.Y.P.Sawant for the respondent.

Coram : S.R.Sathe, J.
Dated : 4th July, 2007

P.C.

1. Heard learned advocate for the appellant. Perused the judgment of the trial court as well as of the First Appellate Court.

2. The plaintiff had filed suit for possession, declaration and injunction in respect of the land described in detail in para 1 of the plaint. The said suit was dismissed by the Trial Court holding that the plaintiff has failed to prove his title to the suit land. The said finding is confirmed by the First Appellate Court. Thus, there is concurrent finding of fact that the plaintiff has failed to prove title to the suit property. There is nothing on record to indicate that the said finding of fact

is perverse or the same is not borne out from the material on record. It was tried to be argued on behalf of the appellant that in this case the defendant had not even stepped into the witness box and as such adverse inference ought to have been drawn against him. However, it appears that the defendant had taken the contention with regard to adverse possession. So, to that extent both the courts below held that defendant has failed to prove the same. But finding that the appellant-plaintiff, on whom there was initial burden to prove his title has failed to prove the same, no importance was given to the fact that defendant had not examined himself.

3. It appears that the dispute between the parties is in fact in respect of the small portion of land admeasuring 50ft X 4 ft, possession of which is in fact taken by the defendant in pursuance of Tabe Pavti-Exhibit 53. The plaintiff failed to prove that the said portion or strip of land forms part and parcel of the land bearing Survey No.75A, Hissa No.3. So, no substantial question of law is involved in this appeal. Hence, the appeal is dismissed in limine with costs.

(S.R.Sathe, J.)